IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.478 OF 2004

M/s.Shreechem Laboratories .. Petitioner

v/s.

The Union of India and ors. .. Respondents

Mr.S.P.Bharati for petitioner.

Mr.A.S.Rao with Mr.Y.R.Mishra for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 22nd December, 2004

P.C.

Heard Mr.S.P.Bharati, the learned counsel for the petitioner.

2. It is not in dispute that the appeal filed by the petitioner before the Commissioner of Central Excise & Customs (Appeals) was barred by one year two months and six days. The petitioner made an application for condonation of delay but that came to be rejected by the Commissioner of Central Excise & Customs (Appeals), giving rise to the present writ petition.

3. In the light of our judgment dated 30th September, 2004 in the case of M/s.Navinon Limited v/s. The Union of India & anr. (Writ Petition No.2314 of 2004) the impugned order cannot be faulted.

4. In the case of M/s.Navinon Limited we observed

thus-

"15. The legal position that emerges from the various pronouncements referred to above is that the provisions of Limitation Act, 1963 apply only to 'courts'. Such courts may not be civil courts. These courts may not necessarily be constituted under the Code of Civil Procedure or the Code of Criminal Procedure. The forum that functions as a court or has trappings of the court would be a court for the purposes of applicability of the Limitation Act, 1963. The jurisdiction to entertain proceedings, appeals or revisions under the special laws is sometimes given to the ordinary courts, and sometimes given to separate tribunals constituted under the special law. Such tribunals constituted under the special law which function as courts or having trappings of courts may be treated as courts for the purposes of the Limitation Act, 1963 but not all bodies or authorities hearing appeals or revisions under special law, having no trappings of the court or which do not function as a court.

16. The Commissioner of Central Excise (Appeals) empowered to hear appeals under section 35 of Central Excise Act, in our considered view, cannot be treated to be forum functioning as a court nor the said authority can be said to have trappings of the court. The Commissioner of Excise (Appeals), though, is a appellate authority under section 35 but his decisions do not satisfy the essential tests of judicial pronouncement. He cannot be said to possess the attributes of a court. In the entire Central Excise Act, there is no provision which even makes the Commissioner of Central Excise (Appeals) a court for limited or specific purpose. The appellate authority under section 35 of the Central Excise Act is only executive authority; true it is while hearing the appeals contemplated under section 35, the Commissioner of Central Excise (Appeals), acts quasi judicially. But that would not make Commissioner, Central Excise a court or an authority functioning as a court or having the trappings of a court. In view of the admitted position that the appeal was preferred by the present petitioner under section 35 beyond 30 days of the expiry of statutory period of 60 days, the Commissioner of Central Excise (Appeals) cannot be said to have committed any error in not entertaining the appeals as barred by limitation prescribed under section 35 of the Central Excise Act.

17. We, therefore, hold that section 29(2) of the Limitation Act, 1963 is not attracted to the appeals preferred under section 35 of the Central Excise Act and consequently section 5 of the Limitation Act is not applicable to such appeals.

18. Even otherwise, as per section 35, the appellate authority could extend the period of limitation upto 30 days of the expiry of statutory period of 60 days. There being any express provision in section 35 of Central Excise Act putting a ceiling on the powers of appellate authority even on the proof of sufficient cause, the general provision of section 5 of Limitation Act shall be deemed to be excluded. The language of section 35 of Central Excise Act does not permit invocation of section 5 of Limitation Act, either, in terms or in principle.

19. In what we have observed above, in view of the admitted position that the appeal was preferred by the present petitioner under section 35 beyond 30 days of the expiry of statutory period of 60 days, the Commissioner of Central Excise (Appeals) cannot be said to have committed any error in not entertaining the appeals as barred by limitation prescribed under section 35 of the Central Excise Act."

5. For the self-same reasons, this writ petition is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)